

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

-----X
UNITED STATES OF AMERICA, : Case No. 5:17-cr-00200
: Cleveland, Ohio
Plaintiff, :
:
v. : Monday, June 19, 2017
:
CLIFFORD J. MILLER, :
:
Defendant. :
-----X

TRANSCRIPT OF DETENTION PROCEEDINGS
BEFORE THE HONORABLE DAN A. POLSTER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

1 Monday, June 19, 2017 12:46 p.m.

2 DEPUTY CLERK: All rise.

3 THE COURT: All right. Please be seated.

4 All right. We're here for the detention hearing in
5 U.S. versus Clifford Miller, who is here with
6 Miss Kucharski. We have Mr. DeBaggis for the government.
7 Mr. Jennings for the probation department.

8 So we're ready to proceed. So, Mr. DeBaggis.

9 MR. DeBAGGIS: All right. The government
10 calls Task Force Officer Gilbride, Michael Gilbride, as a
11 witness.

12 THE COURT: Okay. Officer Gilbride.

13 (Witness Sworn.)

14 DIRECT EXAMINATION OF MICHAEL GILBRIDE

15 BY MR. DeBAGGIS:

16 Q. Sir, please state your full name and spell your last
17 name.

18 A. Michael Gilbride, spelled G-I-L-B-R-I-D-E.

19 Q. Where are you employed?

20 A. City of Akron Police Department.

21 Q. And how are you employed there?

22 A. I work in their narcotics unit, and I'm currently
23 detailed to the Drug Enforcement Administration in
24 Cleveland, Ohio, as a task force officer.

25 Q. Okay. And how long have you been a task force officer

1 with the DEA?

2 A. Three years.

3 Q. During the course of your duties as a task force
4 officer, were you involved in an investigation involving
5 Clifford Miller?

6 A. Yes, sir.

7 Q. And was a Title III wire interception a part of that
8 investigation?

9 A. Yes, it was.

10 Q. And what year was that?

11 A. 2015. Approximately August of 2015 through
12 October -- until October of 2015.

13 Q. And as a result of that investigation, did an
14 indictment -- was an indictment returned in this case?

15 A. Yes, on June 1st.

16 Q. And in connection with that indictment, was an arrest
17 warrant issued for Clifford Miller?

18 A. Yes, sir.

19 Q. And were you involved in executing that arrest
20 warrant?

21 A. Yes.

22 Q. And directing your attention to last Tuesday,
23 June 13th, 2017, what did you or other officers do in
24 connection with executing that arrest warrant?

25 A. Officers arrived at 1317 Louisiana Avenue, known to be

1 the residence of Mr. Miller. They knocked on the door. His
2 wife leaned her head out, asked, May I help you? They
3 identified themselves, stated that they needed her to answer
4 the door. Shortly after that Mr. Miller came to the door.
5 He was not wearing any clothing. He had a towel around his
6 waste. They escorted him inside the residence, conducted a
7 protective sweep of the house.

8 Q. Let me stop you for a minute.

9 What did you do to conduct the protective sweep?

10 A. The officers present at the house checked the rooms
11 make sure -- they were aware that there was one person -- at
12 least one person upstairs, and they were aware based on
13 intercepted conversations of Mr. Miller's phone, that there
14 was a potential of a firearm being present in the home as
15 well. For their safety, they checked all the rooms of the
16 home; basement, first floor, and the upstairs living room --
17 or the upstairs bedroom.

18 Q. Okay. And in connection with the protective sweep,
19 were there items, contraband, that was of interest that you
20 took photographs of?

21 A. Yes.

22 Q. All right. Now, there are a packet of exhibits in
23 front of you. Directing your attention to Government
24 Exhibit 1A.

25 Can you identify that photograph?

1 A. A blue used rubber glove and a plastic bag containing
2 an unknown residue.

3 Q. Okay. Did you open the bag to inspect what the
4 residue was or test it in any way?

5 A. It was visually inspected; however, it was not tested.

6 Q. Why not?

7 A. Based on intercepted conversations of Mr. Miller's
8 phone, we were aware that he was also selling heroin and
9 fentanyl, as well as controlled purchases of heroin made
10 from Mr. Miller. We decided not to test it, have it sent
11 out to BCI to have them test it due to their laboratory due
12 to the toxic nature of fentanyl.

13 Q. So you had some health concerns for you and your
14 fellow officers?

15 A. Yes, sir.

16 Q. All right. Directing your attention to Government
17 Exhibit 1B.

18 Can you identify that photograph?

19 A. Additional plastic bags of an unknown white powdery
20 residue.

21 Q. And where were those found?

22 A. On -- in the basement right next to where the craps
23 table was.

24 Q. Okay. 1C?

25 A. NutriBullet grinder.

1 Q. 1D?

2 A. Second grinder, bullet style.

3 Q. 1E?

4 A. Plastic sandwich bags.

5 Q. All right. Now, as a result of these photographs and
6 other information determined at the time of the protective
7 sweep and the arrest of Mr. Miller, did you prepare an
8 affidavit to search the property at 1317 Louisiana Avenue in
9 Akron, Ohio?

10 A. Yes.

11 Q. Directing your attention to Government Exhibit
12 Number 2, can you identify that document?

13 A. Search warrant type for 1317 Louisiana Avenue.

14 Q. Was a search warrant executed?

15 A. Yes, sir.

16 Q. Was an inventory prepared in connection with the
17 return of the search warrant?

18 A. Yes.

19 Q. And directing your attention to pages 2 and 3 of that
20 document, document Exhibit Number 2.

21 Does that itemize the inventory, the items seized at
22 the time of the protective sweep or at the time of the
23 execution of the search warrant?

24 A. Yes.

25 Q. Can you, starting with the first item, go through each

1 item and identify what was found and where it was found.

2 A. Yes. One Glock Model 23 40-caliber handgun.

3 THE COURT: I'm sorry. I seem to have a
4 different inventory -- oh, I'm sorry. I was skipping the
5 page. Okay.

6 THE WITNESS: Item 1, Glock Model 23
7 40-caliber handgun with a high capacity magazine containing
8 29 40-caliber bullets. Item 2 --

9 BY MR. DeBAGGIS:

10 Q. Just to stop you for a minute.

11 Where was that found?

12 A. The way the bedroom was situated, there was a box
13 spring or a bed or -- it was just a mattress on the floor.
14 The firearm was recovered on the floor next to the mattress.

15 Q. And was that a room in which it was determined that
16 Mr. Miller slept?

17 A. Yes.

18 Q. And the high capacity magazine, can you describe that;
19 what that is and how that works.

20 A. That model firearm is designed to carry 10 bullets,
21 high capacity magazine. It's designed to hold obviously a
22 lot more bullets. This one held, I believe, 28, plus one in
23 the chamber for 29. It extends long below the pistol grip,
24 the grip of the firearm.

25 Q. All right. And Item Number 2?

1 A. The electric grinders.

2 Q. Where were those located?

3 A. In the basement.

4 Q. Item Number 3?

5 A. Miscellaneous baggies with the unknown residue and
6 powdered sugar also found in the basement.

7 Q. Number 4?

8 A. Plastic baggie containing 4 grams of marijuana in the
9 living room.

10 Q. Number 5?

11 A. Plastic baggie of what was believed to be heroin at
12 the time; however, we were later -- determined to be MDMA,
13 Molly.

14 Q. And how was that determination made later?

15 A. Mr. Miller's wife claimed ownership of those -- of the
16 MDMA. She said it was not heroin. She said, It's Molly.
17 She was asked how she knew that. She said because it was
18 hers.

19 Q. Item Number 6?

20 A. \$290 U.S. currency found in the master bedroom in a
21 box.

22 Q. Was that found in the box with the Molly?

23 A. Yes.

24 Q. Item Number 7?

25 A. \$5,450 cash found in the master bedroom in a pair of

1 men's shorts in the pocket.

2 Q. And did you determine that those are Mr. Miller's
3 shorts?

4 A. We determined that they're men's shorts, waist 36,
5 with a male belt buckle.

6 Q. Item Number 8?

7 A. One Apple iPhone, master bedroom.

8 Q. And Item Number 9?

9 A. Two photos found in the master bedroom.

10 Q. Clifford Miller, he's seated next to defense counsel
11 today in the courtroom?

12 A. Yes.

13 Q. Okay.

14 MR. DeBAGGIS: I have no further questions at
15 this time, Your Honor.

16 THE COURT: Thank you.

17 Miss Kucharski.

18 CROSS-EXAMINATION OF MICHAEL GILBRIDE

19 BY MS. KUCHARSKI:

20 Q. Officer Gilbride, just to be clear, this indictment in
21 the current case, the time frame for that indictment is 2014
22 to 2015, correct?

23 A. Yes, ma'am.

24 Q. And your involvement -- you've been involved in this
25 case from the inception?

1 A. Yes.

2 Q. All right. So you were involved in obtaining the wire
3 taps, correct?

4 A. Yes, ma'am.

5 Q. And you previously just testified that the wire taps
6 ran from August of 2015 to October of 2015, correct?

7 A. Yes, ma'am.

8 Q. Now, you just offered some testimony regarding heroin
9 and fentanyl, correct?

10 A. Yes, ma'am.

11 Q. Heroin and fentanyl are not charged in the indictment,
12 correct?

13 A. Yes, ma'am.

14 Q. And in your search of the home, there was no heroin or
15 fentanyl that was discovered, correct, to your knowledge?

16 A. To my knowledge, no.

17 Q. So, again, what's your information regarding heroin
18 and fentanyl?

19 A. We purchased it from your client via controlled buys.

20 Q. And he's not charged with that?

21 A. Not yet.

22 Q. And when are you claiming that was done?

23 A. We made several controlled purchases from both Michael
24 and Clifford Miller of heroin and cocaine beginning in July
25 of 2014. The last controlled buy was made in August

1 of 2015.

2 Q. And they are not part of the indictment?

3 A. The cocaine buys are. The heroin are not yet.

4 Q. And this matter was already presented to the Grand
5 Jury, correct?

6 A. The cocaine conspiracy, yes, not the heroin.

7 Q. When you went to arrest Mr. Miller, how many officers
8 were present?

9 A. I was not present as it was executed; however, I would
10 guesstimate roughly 10 to maybe 15.

11 Q. And there was no information that you learned that
12 Mr. Miller posed any resistance or threats to the officers,
13 correct?

14 A. He did not.

15 Q. You had previously mentioned that there was some
16 information that the officers had that there was a weapon in
17 the home?

18 A. There was potential for a weapon to be present in the
19 home, yes.

20 Q. And during that protective sweep, no weapon was
21 located, correct?

22 A. No.

23 Q. And you're aware that Mrs. Miller, Brittany Miller,
24 is -- or has a CCW license, correct?

25 A. Unaware of that. No, I'm not.

1 Q. Now, are you also aware that Mr. Miller earns a living
2 off tattoo artistry?

3 A. Yes, I am.

4 Q. And you're aware that when one gives tattoos,
5 oftentimes they wear rubber gloves, correct?

6 A. Yes.

7 Q. And rubber gloves were found in your search, correct?

8 A. Yes, ma'am.

9 Q. In fact, I believe one of these exhibits, Government
10 Exhibit 1A is -- has a picture with a rubber glove in it,
11 correct?

12 A. Yes, ma'am.

13 Q. And with respect to the pictures that were taken on
14 the day of the arrest, 1A, 1B, 1C, and 1D, and 1E, other
15 than your testimony indicating that there was white residue,
16 you don't know what that residue is, correct?

17 A. That's correct.

18 Q. That's been sent to the crime lab?

19 A. Yes, it has.

20 Q. And the results have not been returned?

21 A. Not yet.

22 Q. But you did not locate any fentanyl or heroin in the
23 house, to your knowledge, correct?

24 A. That's correct.

25 Q. The substance that was retrieved when you went back

1 for the search warrant that you indicated that Mrs. Miller
2 took possession of, she told you that that was Molly,
3 correct?

4 A. Yes.

5 Q. And she said that that belonged to her?

6 A. That's correct.

7 Q. Were you present during the search warrant?

8 A. Yes.

9 Q. And that substance was found located within items that
10 were her personal female items, correct?

11 A. Yes.

12 Q. So you have no reason to believe that that was not
13 hers?

14 A. Correct.

15 Q. And, in fact, Mrs. Miller was given a summons
16 regarding that substance, correct?

17 She has to appear in court for that?

18 A. Yes.

19 Q. In state court?

20 A. Yes.

21 Q. In the search of the basement, you also located tattoo
22 equipment, correct?

23 A. It was observed, yes.

24 Q. And that appears to be the area where Mr. Miller
25 performs his work?

1 A. Yes.

2 Q. Now, the firearm that was located during the search
3 warrant, you indicated that that was located in the master
4 bedroom?

5 A. Yes, ma'am.

6 Q. Did you find a safe during your search of the
7 residence?

8 A. Not to my knowledge.

9 Q. And you indicated that gun was underneath the bed?

10 A. No, it was next to it.

11 Q. Next to the bed in a box, is that what you said?

12 A. No. It was just laying on the ground.

13 Q. But it wasn't located during the protective sweep?

14 A. It was actually located when Mr. Miller -- when they
15 went to go get his clothes. Again, Mr. Miller answered the
16 door. He was naked. He had a towel around his waste. They
17 asked his wife, Brittany Miller, to retrieve some clothes
18 for him. She was escorted upstairs to the bedroom area by
19 two officers. When she got to that room, she was moving
20 around pretty hurriedly trying to find clothes for him.
21 They told her to slow down. It's not a hurry. They asked
22 if there was a gun in there. She said, Yes. They asked
23 where. She pointed to the ground next to the bed -- next to
24 the mattress. That's where it was located. That's when it
25 was actually recovered.

1 Q. And she also indicated to the officers that that was
2 her firearm, correct?

3 A. I'm unaware of that if she did or not.

4 Q. Was that gun sent for DNA?

5 A. It's being sent out, yes.

6 Q. And now in Government's Exhibit 2, the description of
7 the property --

8 A. Mm-hmm.

9 Q. -- some of the property that's listed in this receipt
10 inventory is pictured in Government's Exhibit 1, correct?

11 A. Yes, ma'am. It would be Items 2 and 3.

12 Q. Like the grinders, correct?

13 A. Yes, ma'am.

14 Q. And the plastic baggies?

15 A. That's correct.

16 Q. Now, with respect to the powdered sugar, how did you
17 identify that as powdered sugar?

18 A. It says powdered sugar on the bag. It has the same
19 consistency as powder sugar.

20 Q. So there was no NIC test done on that?

21 A. No.

22 Q. And, Officer Gilbride, you've had a chance to review
23 Mr. Miller's criminal history, correct?

24 A. Yes.

25 Q. Prior to testifying today?

1 A. Yes.

2 Q. And you're aware that his last criminal case was in
3 2007, correct?

4 A. Yes, ma'am.

5 Q. And he was placed on federal supervision?

6 A. Yes.

7 Q. And you're aware that that federal supervision was
8 terminated successfully, correct?

9 A. Yes.

10 Q. So there's been almost a ten-year period of time where
11 he has not been involved in the criminal justice system,
12 correct?

13 A. Correct.

14 Q. And, again, this case time frame is from 2014 to 2015?

15 A. Correct.

16 Q. And you don't have any information in your file or
17 that you're sitting on that places him dealing drugs after
18 2015, correct?

19 A. No.

20 MS. KUCHARSKI: If I can have a moment, Your
21 Honor.

22 THE COURT: Okay.

23 (Pause in Proceedings.)

24 BY MS. KUCHARSKI:

25 Q. Officer, with respect to the controlled buys that you

1 mentioned in your testimony, are those audio or video
2 recorded?

3 A. Yes, both. Some are audio. They're all -- strike
4 that.

5 They're all audio. There are some video.

6 MS. KUCHARSKI: Nothing further.

7 THE COURT: Anything on that, Mr. DeBaggis?

8 MR. DeBAGGIS: No, Your Honor.

9 THE COURT: Okay. Thank you.

10 Officer, you may step down.

11 MR. DeBAGGIS: Your Honor, in addition to the
12 identified Exhibits, 1 [sic] through E and Government
13 Exhibit Number 2, the government would proffer Government
14 Exhibit Number 3, which is a bond revocation and detention
15 order in Case Number 5:07CR69, where at page 2 it indicates
16 that there was a finding that Pretrial Services Officer
17 Niederkofler stated for the record, "The violations
18 committed by the defendant as set forth in his
19 September 6th, 2007 violation report, which outlines
20 defendant's use of narcotic substances from May through
21 June 2007, and his failure to report to the pretrial
22 services office as directed."

23 The government would offer Government Exhibit 3 as
24 well as the pretrial services report with the defendant's
25 criminal history.

1 THE COURT: All right. Those items are
2 submitted.

3 MR. DeBAGGIS: The government has nothing
4 further.

5 THE COURT: Okay. All right. Does the
6 defendant want to put in any evidence or any proffers?

7 MS. KUCHARSKI: Your Honor, I do have two
8 witnesses to call.

9 THE COURT: Okay.

10 MS. KUCHARSKI: The first is Brittany Miller.

11 MR. DeBAGGIS: Your Honor, the government
12 would move for separation of witnesses.

13 THE COURT: All right. Who is the second
14 witness, Miss Kucharski?

15 MS. KUCHARSKI: His father.

16 THE COURT: All right. Yeah, Mr. Miller, if
17 you would go outside, please. One of the witness rooms
18 should be open, and then we'll bring you in when Ms. Miller
19 finishes.

20 (Witness Sworn.)

21 THE COURT: All right. Ma'am, if you could
22 raise your right hand.

23 DIRECT EXAMINATION OF BRITTANY MILLER

24 BY MS. KUCHARSKI:

25 Q. Can you please state your full name and spell your

1 last name for the court reporter.

2 A. Brittany Chrisella Miller. M-I-L-L-E-R.

3 Q. And, Miss Miller, are you married to Clifford Miller?

4 A. Yes.

5 Q. And how long have you two been married?

6 A. It will be ten years this August.

7 Q. Do you have any children?

8 A. Yes. We have two children.

9 Q. And how old are they?

10 A. They're both 13 right now. My daughter will be 14 in
11 a couple of days.

12 Q. And do they reside in your home?

13 A. Yes.

14 Q. And were you and Mr. Miller, prior to his arrest in
15 this case, were you two residing together?

16 A. Yes.

17 Q. And have you always resided together as husband and
18 wife?

19 A. Yes.

20 Q. And without stating your address, what city do you
21 reside in?

22 A. Akron, Ohio.

23 Q. Did you ever live outside of Akron, Ohio?

24 A. Briefly I lived in Tennessee. This was about ten
25 years ago.

1 Q. Okay. Was that with Mr. Miller?

2 A. It was not. It was when he was actually in prison. I
3 lived there for about two months, but that's it.

4 Q. And you two got married when he was released from
5 prison, correct?

6 A. No. We were married prior to him going to prison.

7 Q. Okay. During the course of your relationship with
8 Mr. Miller, have you always together been within Northeast
9 Ohio?

10 A. Yes.

11 Q. And, to your knowledge, does Mr. Miller's family live
12 in Northeast Ohio?

13 A. Yes.

14 Q. And can you tell the Court some of the family members
15 that live in Northeast Ohio?

16 A. Yes. Pretty much our whole family, his mother,
17 father. He has two brothers and a sister. Very close-knit
18 family. I mean, he has nine uncles -- aunts and uncles, and
19 all their children are really close as well. So pretty much
20 the whole family. My whole family as well.

21 Q. And do they live in the Akron area as well?

22 A. Yes.

23 Q. And you said the family sees each other on a regular
24 basis?

25 A. Yes.

1 Q. All right. Now, since your husband's release from
2 prison, how does he make a living?

3 A. He is very artistic. He does tattoos. That's like
4 the bulk of the income. But he always builds grills. He
5 does custom artwork like chairs.

6 THE COURT: You said he builds grills?

7 THE WITNESS: Grills. Like a grill that you
8 grill on.

9 THE COURT: Okay.

10 THE WITNESS: Like a barrel grill.

11 THE COURT: Okay.

12 THE WITNESS: He makes furniture, he details
13 cars. I mean, he's pretty artistic. He's pretty handy
14 around the house. He can pretty much do whatever he puts
15 his mind to.

16 BY MS. KUCHARSKI:

17 Q. And he is able to make a living and help support the
18 family with that business, correct?

19 A. Yes, he is.

20 Q. Now, prior to this hearing, you had sent me a number
21 of photographs regarding your husband's tattoo abilities and
22 also his other artistic abilities, did you not?

23 A. Yes, I did.

24 MS. KUCHARSKI: And, Your Honor, prior to
25 court, I did provide the government with a copy of

1 Defendant's Exhibits A through O, and I also left a copy for
2 the Court with Miss King.

3 May I approach the witness?

4 THE COURT: Okay.

5 BY MS. KUCHARSKI:

6 Q. Miss Miller, are those the photographs that you
7 e-mailed to me?

8 A. Yes, they are.

9 Q. And why did you want me to have those?

10 A. As I told you in the e-mail, I was just trying to
11 paint a picture of my husband. He is a family guy. You
12 know, he makes an honest living at home with the kids. He
13 works out of our home. Just trying to help the Court see
14 what type of person my husband is. That's why I provided
15 them for you.

16 Q. And he does provide financial resources that help
17 support your family, correct?

18 A. Yes, he does.

19 Q. And are you employed?

20 A. I am, yes.

21 Q. And what do you do?

22 A. I actually have a radio station and I do credit
23 restoration as well.

24 Q. So you also contribute financially to the family?

25 A. Yes.

1 Q. Is it a situation where you use both of your incomes
2 to make ends meet in the family?

3 A. Yes. Absolutely.

4 Q. Okay. And without Mr. Miller present doing his
5 artistic tattoos and the other things, would your family
6 suffer financially?

7 A. Yes, we would.

8 Q. And are you aware of how long Mr. Miller has lived in
9 the community?

10 A. Yeah. He's lived there his whole life.

11 Q. Do you know if he has a passport?

12 A. He does not have a passport.

13 Q. Now, I want to talk to you about some of the items
14 that were found in the home when the law enforcement came
15 and did a search.

16 And you heard the officer testify that he found a
17 brown substance, which initially they listed as heroin?

18 A. Correct.

19 Q. And can you tell the Court what you told the officers
20 that day when they discovered that?

21 A. Well, initially they were pulling money out of the box
22 that I had it in, and I was telling them, like, Hey, that's
23 my money.

24 And, you know, they're like, You don't want this
25 because it has heroin in it.

1 And then I remembered, I said, No, that's mine.
2 That's Molly. That's not his. It was in, like you said, my
3 personal items. I just let them know that it was mine.

4 Q. What personal items?

5 Like can you describe for the Court where that was
6 located?

7 A. Yes. I have a vanity in my room with, like, all my of
8 perfumes and stuff, and it was actually, like, inside of a
9 box that had, like, female items in it.

10 Q. And how long had that been in the box?

11 A. We actually went to Vegas in November, and that's when
12 I got it. Should have threw it away. Just still had it. I
13 haven't touched it since then. I honestly forgot it was
14 there or I would have told the officers when they went
15 upstairs in my room as well, like I told them about the
16 firearm.

17 Q. And is this a situation where your husband uses Molly?

18 A. No, it's not.

19 Q. And are you a regular user of Molly?

20 A. No.

21 Q. And that was purchased out in Vegas?

22 A. Yes.

23 Q. And you had forgotten about it?

24 A. Correct.

25 Q. Now, they also located a firearm in the residence?

1 A. Correct.

2 Q. Can you tell the Court who owns that firearm?

3 A. I own the firearm.

4 Q. And are you a holder of a CCW license?

5 A. Yes.

6 Q. Is there a safe in your home where you store that
7 firearm?

8 A. It's not actually a safe, but it's a lockbox. I have
9 a key for it. I'm the only one with the key.

10 Q. And do you know where they discovered that firearm on
11 the day of the search warrant?

12 A. Yes. It was by my bed. I was the one that told them
13 where it was. And it was only by my bed because I heard the
14 knock on the door. I mean, they were banging pretty hard,
15 and I went and grabbed it. Then my husband went to answer
16 the door, and I just put it there. I didn't really think,
17 you know, police were going to come in the house or anything
18 like that.

19 Q. So you had recently, when you heard the banging,
20 opened the lockbox?

21 A. Yes.

22 Q. Prior to that, it was locked and secured?

23 A. Correct, yes.

24 Q. And your husband didn't have access to that, correct?

25 A. No.

1 Q. Now, with respect to his tattoo business, does he use
2 rubber gloves?

3 A. Yes.

4 Q. All right. And I showed you some of the government's
5 photographs prior to court this morning, correct?

6 A. Uh-huh.

7 Q. And those blue rubber gloves, is that what he uses in
8 his tattoo business?

9 A. He does use rubber gloves. It's funny, though, he
10 doesn't usually use blue rubber gloves. So those were
11 actually like the gloves I think that the police had on. He
12 usually uses either black or plastic gloves. But, yeah.

13 I mean, we also found some all around the house where
14 they left their gloves. So I don't really think those --
15 that was his gloves. But he does use plastic gloves for
16 tattoos.

17 Q. And there was some marijuana found in the house. If
18 I'm reading this inventory right, it says 4 grams?

19 A. Correct.

20 Q. And who owned that marijuana, if you know?

21 A. That was mine as well.

22 Q. All right. And was that for personal use?

23 A. Yes.

24 Q. Do you have a medical marijuana card?

25 A. No, I don't.

1 Q. And do you know your husband to smoke marijuana?

2 A. No, he does not.

3 Q. And you're aware of your husband's criminal history,
4 correct?

5 A. Yes.

6 Q. When he was released off of federal supervision last
7 time, he didn't have any violations while he was on
8 supervision, correct?

9 A. No, he did not.

10 Q. Do you ever know him not to appear for court?

11 A. No.

12 Q. Do you consider him -- have you ever known him to be
13 violent or dangerous?

14 A. No, absolutely not.

15 Q. As far as mental health, do you know whether he's ever
16 been diagnosed with any type of mental health diagnosis?

17 A. No, not to my knowledge.

18 Q. And is he able to come back and reside at your
19 residence?

20 A. Yes.

21 MS. KUCHARSKI: If I can have a moment, Your
22 Honor.

23 THE COURT: Okay.

24 MS. KUCHARSKI: I have nothing further.

25 THE COURT: Any cross?

1 MR. DeBAGGIS: Yes, Your Honor.

2 CROSS-EXAMINATION OF BRITTANY MILLER

3 BY MR. DeBAGGIS:

4 Q. So the Molly, the drugs that were found in the
5 bedroom, that was your Molly; is that right?

6 A. It was, yes.

7 Q. And the marijuana was your marijuana?

8 A. Correct.

9 Q. And the gun was your gun?

10 A. Correct.

11 Q. And you keep the gun secured in a safe?

12 A. In a lockbox.

13 Q. Okay. It was on the floor at the time of the search,
14 though; is that correct?

15 A. It was, yes.

16 Q. Yeah.

17 All right. And it's a Glock, is that the right --

18 A. Yes.

19 Q. Yeah.

20 Where did you buy the gun?

21 A. At a gun show.

22 Q. And did you buy the extended magazine at the time?

23 A. I did, yes.

24 Q. So that morning, the gun had a bullet in the chamber
25 and 28 rounds in the extended magazine?

1 A. Correct.

2 Q. Okay. Why did you need an extended magazine?

3 A. I didn't -- I don't for sure need one, but, I mean, I
4 do like guns. Like I said, I have my CCW. I go to the
5 range and practice shooting. I didn't need it. I just had
6 it.

7 Q. Have you practiced shooting with the extended
8 magazine?

9 A. Yes.

10 Q. And have you got off 29 rounds?

11 A. Yes.

12 Q. And how long does that take you?

13 A. About three minutes.

14 Q. Three minutes?

15 A. Yeah.

16 Q. All right. Where did you buy the Molly?

17 A. When we were in Vegas. I bought it from somebody.

18 Q. Who did you buy it from?

19 A. I don't know who. We met somebody out there.

20 Q. So you took some while you were there and you had some
21 left over?

22 A. I actually didn't take it while we were there. I was
23 planning on taking it, but I did not take it.

24 Q. And then you brought it back on the plane?

25 A. I did, yeah. It was in my suitcase.

1 Q. Okay. It was in the suitcase that you checked at the
2 airport?

3 A. Yes.

4 Q. And you saw the -- I don't know if they're still up
5 there -- Government Exhibits 1 through E?

6 A. They're not up here, no.

7 Q. No, they're not.

8 There are a couple of grinders in your house?

9 A. Mm-hmm.

10 Q. Were those your grinders?

11 A. Well, they're our grinders. We make smoothies all the
12 time. I have one in my kitchen as well that they didn't
13 touch.

14 Q. Okay. Did you ever use the marijuana or use the
15 grinders for the marijuana?

16 A. No.

17 Q. Any other drugs?

18 A. No.

19 Q. Were there any other drugs in the house?

20 A. No.

21 Q. And you're aware that your husband's a prohibited
22 person from being around or having possession of a firearm?

23 A. I am aware of that, yes. That's why I had the lockbox
24 for it.

25 Q. Okay.

1 MR. DeBAGGIS: No further questions, Your
2 Honor.

3 THE COURT: Anything on that, Miss Kucharski?

4 REDIRECT EXAMINATION OF BRITTANY MILLER

5 BY MS. KUCHARSKI:

6 Q. Miss Miller, you took possession -- or told the law
7 enforcement that the gun and the Molly and the marijuana
8 were yours, correct?

9 A. I did. And I always told them where it was located as
10 well. I didn't -- it wasn't recovered. You know, I told
11 them exactly where it was.

12 Q. Okay. And you don't have a criminal history, correct?

13 A. No, I don't.

14 Q. And now you've been cited for a drug offense, correct?

15 A. Correct.

16 Q. And you need to appear in state court for that?

17 A. I do, yes.

18 Q. And you do carry a CCW license?

19 A. Yes.

20 Q. And that gun is in a locked box away from your
21 husband, correct?

22 A. It was, yes.

23 Q. And you are the only person who has the key?

24 A. Yes.

25 MS. KUCHARSKI: Nothing further.

1 THE COURT: Okay. You may step down then.

2 All right. Now, we can have Mr. Miller.

3 Sir, if you can raise your right hand.

4 (Witness Sworn.)

5 DEPUTY CLERK: You can go ahead and have a
6 seat.

7 DIRECT EXAMINATION OF CLIFFORD E. MILLER

8 BY MS. KUCHARSKI:

9 Q. Mr. Miller, can you state your full name and spell
10 your last name for the Court.

11 A. Clifford Eugene Miller, M-I-L-L-E-R.

12 Q. And what city do you reside in Mr. Miller?

13 A. Akron, Ohio.

14 Q. All right. And is Clifford, who is sitting at trial
15 table over here, is this your son?

16 A. Yes.

17 Q. How many children do you have?

18 A. Four.

19 Q. Do they all reside in the Northeast Ohio area?

20 A. Yes. One daughter is in Columbus.

21 Q. Okay. But she's still in Ohio, correct?

22 A. Right.

23 Q. Would you consider your family a close-knit family?

24 A. Yes.

25 Q. And are you here today in court because you support

1 your son, Clifford?

2 A. Yes.

3 Q. And what's your contact like with Clifford and his
4 family?

5 How often do you see them?

6 A. Four to five times a week.

7 Q. And can you tell the Court what type of father your
8 son is?

9 A. Too nice.

10 Q. Too nice?

11 A. Not being funny. But, yeah, trusting, caring.

12 Q. And are you aware of whether or not he financially
13 supports his family?

14 A. And most people he knows.

15 Q. And you've heard -- well, you didn't hear actually
16 because you weren't in court.

17 Do you know what your son does to help support his
18 family?

19 A. Can I elaborate?

20 Q. Yes. Do you know whether or not he gives tattoos?

21 MR. DeBAGGIS: Objection.

22 THE WITNESS: Anything with his hands.

23 THE COURT: Hold it. What is -- the question
24 is, do you know what your son does to support his family?

25 THE WITNESS: Yes.

1 THE COURT: All right. Do you know what your
2 son does to support his family?

3 THE WITNESS: Yes.

4 THE COURT: Okay. You can answer.

5 Objection overruled.

6 BY MS. KUCHARSKI:

7 Q. What does he do? What are the types of things he
8 does?

9 A. He's a carpenter. He makes custom furniture, details,
10 paints cars, tattoos. I mean, I could go on and on, but,
11 yes.

12 Q. He's a pretty handy artistic guy?

13 A. Bred with his hands, unlike any I know.

14 Q. And, sir, can you tell the Court who else is present
15 today from your family here in support of your son?

16 A. My youngest son, my sister-in-law, my niece from
17 Houston, my wife -- I should have said her first -- and his
18 brother, I thought.

19 Q. And you're aware that your son had some legal
20 problems --

21 A. Yes.

22 Q. -- more than ten years ago, correct?

23 A. Yes.

24 Q. All right. And when he had those legal problems, did
25 you ever know him not to appear at court?

1 A. No.

2 Q. He always showed up, correct?

3 A. Right.

4 Q. And he knew that he always had his family there to
5 support him, correct?

6 A. Exactly.

7 Q. And are you still there standing by him while this
8 case is going to be pending?

9 A. Yes, I am. I don't understand all this, but, yes, I'm
10 standing by him.

11 Q. Okay.

12 MS. KUCHARSKI: I have nothing further, Your
13 Honor.

14 THE COURT: Okay. Any cross-examination?

15 CROSS-EXAMINATION OF CLIFFORD E. MILLER

16 BY MR. DeBAGGIS:

17 Q. And, sir, did you ever know your son not to report to
18 pretrial services when he had his other case?

19 A. No.

20 Q. Okay. And did you ever know him not to use drugs for
21 two months while the other case was pending?

22 A. Say that again.

23 Q. Did you ever know your son not to use drugs, to use
24 illegal drugs, while he was on supervision on that other
25 federal case that he had?

1 A. I'm not sure I understand. Did I ever know him not to
2 use drugs?

3 Q. Yes. Did he use drugs while he was on bond in the
4 other case?

5 A. I never was close enough to know that. They knew I
6 wouldn't permit that.

7 Q. Okay. Thank you.

8 MR. DeBAGGIS: That's all I have.

9 THE COURT: Okay. Anything on that?

10 MS. KUCHARSKI: I have nothing further, Your
11 Honor.

12 THE COURT: Thank you, Mr. Miller. You may
13 step down.

14 Okay. I take it those were your two witnesses,
15 Miss Kucharski?

16 MS. KUCHARSKI: That's correct, Your Honor.

17 THE COURT: Okay. Anything you want to
18 proffer?

19 MS. KUCHARSKI: Your Honor, we would just ask
20 that the Court consider the exhibits that we presented.

21 THE COURT: Okay. Well, all the exhibits from
22 both sides are admitted.

23 MS. KUCHARSKI: And then we would like to be
24 heard with respect to argument.

25 THE COURT: Okay. Well, I guess I'll have

1 argument now.

2 Mr. DeBaggis, it's your motion, so you should go
3 first.

4 MR. DeBAGGIS: Your Honor, based on the
5 defendant's criminal history, which includes a 2003
6 conviction for trafficking in cocaine, marijuana, a
7 trafficking conviction in 2007, and given the nature and
8 circumstances relative to this arrest, which involved
9 arresting the defendant at his residence when he was in
10 constructive possession, anyway, of this firearm that had an
11 extended magazine containing 29 rounds, and also extensive
12 paraphernalia in the basement area of the residence, and
13 given the fact that, as set forth in Government Exhibit
14 Number 3, that prior, when he was given bond in the 2007
15 federal felon in possession of a firearm case, he violated
16 his supervision by using drugs for two months and failing to
17 report to pretrial services.

18 So the government believes, given all these factors,
19 that detention is appropriate in this case. Not to mention
20 the fact that his prior trafficking offenses qualify him for
21 an 851 enhancement, which would elevate the minimum
22 mandatory penalty from five years to ten years to life in
23 prison.

24 So given all those factors, but especially the
25 circumstances of his living situation at the time of his

1 arrest and the firearm that was found at the time of his
2 arrest, the government believes that detention is
3 appropriate.

4 THE COURT: All right. Just so the record is
5 clear, the defendant on the present indictment is facing a
6 minimum mandatory of five years. He has two prior drug
7 trafficking convictions. So the government could file one
8 or two enhancements, but it hasn't yet, right?

9 MR. DeBAGGIS: Correct.

10 THE COURT: Okay.

11 Okay. Thank you.

12 All right. Miss Kucharski.

13 MS. KUCHARSKI: Thank you, Your Honor.

14 Your Honor, I'd just like to start off by saying that
15 pretrial services did a bond assessment on Mr. Miller, which
16 concluded that he was an appropriate candidate for bond, and
17 that is a part of the pretrial services report, so we would
18 ask the Court to take that into consideration.

19 I'd also ask the Court to take into consideration the
20 fact that there are three people listed on this indictment,
21 one of which is Mr. Miller's brother, and the government had
22 no problem agreeing to a bond in his case.

23 So those two things aside, if the Court then looks at
24 the facts and circumstances of the case, this is a case that
25 was recently indicted for conduct occurring between 2014 and

1 2015. So approximately two years ago.

2 For two years, the government and law enforcement
3 obviously didn't consider Mr. Miller a serious risk to the
4 community because they certainly weren't going out and
5 arresting him right away based on that conduct.

6 I find it extremely offensive that law enforcement got
7 up on the stand and testified about heroin and fentanyl when
8 heroin and fentanyl aren't even a part of this indictment.
9 So I'd ask the Court to disregard those statements.

10 With respect to Government's Exhibit 1, law
11 enforcement also got up and testified that they found
12 residue on items that they recovered. We don't have a lab
13 report currently at this time. We don't know what, if any,
14 residue was on any of those items.

15 But if the Court looks in those photographs, I don't
16 even see residue. I see what looks like plastic wrap and
17 maybe a blue glove wadded up. Now, we know Mrs. Miller
18 testified that he doesn't even use blue gloves. So I'm
19 questioning whether those gloves are those of law
20 enforcement or not.

21 The other facts that the Court has to consider -- and
22 the facts and circumstances, by the way, of the indictment,
23 the indictment is probable cause. I can see that. But
24 that's one factor for the Court to consider, and that factor
25 is not to weigh any more heavily than the other factors in

1 this case.

2 And the other factors that the Court has to rely upon
3 are the physical and mental condition of Mr. Miller. Well,
4 we know that he's healthy. We know that he suffers from no
5 mental health issues. We know that he has significant
6 family ties in the community. He's got the support of his
7 family. Most of his family is here present today for him.
8 He is a financial resource for his family. He has two
9 children under the age of 18. He makes his living as a
10 tattoo artist, also as a handyman. He builds furniture.
11 And we did provide exhibits for the Court to consider in
12 that regard.

13 We know that he's been a resident of Northeast Ohio
14 his entire life. He does have some prior criminal history,
15 but, again, if the Court looks at his criminal history, that
16 criminal history dates back ten years, back to 2007. He
17 successfully completed his stint on federal supervised
18 release once he was released from prison. So there's not
19 even a violation.

20 The violation that the government wants to hang its
21 hat on is from 2007, and they keep indicating to the Court
22 that it was a period of two months of drug use. That's not
23 what the report says. It says that there was drug use. It
24 doesn't even detail in this report what the item was or what
25 the drug was that was used.

1 So I don't know whether it was a prescription
2 medication that he tested positive for and maybe the
3 prescription wasn't his. We don't know that based on this
4 report.

5 But we do know that once he went to prison for that
6 offense, he got out, he followed the conditions of
7 supervised release, and he didn't violate it. We know that
8 he's not a violent individual. He's got no violence on his
9 criminal record. He's not a danger to the community.

10 So the government has no information to suggest to
11 this Court that Mr. Miller is a danger to not appear for
12 court. He's always shown up for court. There's never been
13 one instance where he didn't show up for court. He even
14 showed up when he went for his bond violation report.

15 So there's no information to suggest that he's not
16 going to appear for court in this instance. There's no
17 information to suggest that he's a danger to the community
18 or that he's violent or that he's some type of threat to a
19 witness in this case.

20 There are conditions and combinations of conditions
21 that the Court can put in place to feel comfortable.
22 Pretrial felt comfortable recommending a bond for this
23 individual.

24 So based on all of these things, Your Honor, we are
25 asking the Court to grant Mr. Miller a bond in this matter.

1 He's more than willing to comply with any conditions that
2 the Court deems appropriate.

3 Thank you.

4 THE COURT: All right. The Court has listened
5 carefully to the testimony and the documents and the
6 proffer. The government has the burden of proving by a
7 preponderance of the evidence that there are no conditions
8 or combination of conditions that will both secure
9 Mr. Miller's appearance and protect the community.

10 I really haven't heard much evidence to suggest that
11 Mr. Miller is not likely to appear other than the fact that
12 he is facing a lengthy prison sentence. But there's no
13 evidence from his prior court matters that he did not
14 appear. So I don't think he's a significant flight risk.

15 These are serious charges, but I think there are some
16 combination of conditions that can protect the community. I
17 am somewhat troubled by the gun, and that gun -- that gun is
18 going to be removed from the home.

19 MS. KUCHARSKI: It is already removed, Your
20 Honor.

21 THE COURT: The fact is that it should not
22 have been there, because, Mr. Miller, you knew that you
23 couldn't have a gun anywhere near you.

24 What I'm going to do is place you on home detention
25 with electronic monitoring. You'll stay in custody until

1 that's in place, and you have work release privileges.

2 Although, I understand most of your work is from your
3 home; is that right?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I mean, did you actually -- I
6 didn't hear testimony that you actually work outside your
7 home.

8 THE DEFENDANT: No, I don't.

9 THE COURT: All right. Well, you'll be
10 allowed, if you do some of the work in your garage --
11 obviously, you're not going to be doing automobile detailing
12 inside your house, but I'll count, you know, the garage as
13 part of your home. And you can leave your home to,
14 obviously, come to court, to meet with Miss Kucharski. But
15 if you're going to meet with her, you need to let the
16 pretrial services know that on such and such a day at 1:00,
17 I've got a meeting with my lawyer, and so you'll be released
18 to go there, meet with her and come back. But you can't
19 just go wandering around. Obviously, you can get medical
20 treatment if you need that. But anything else, you've got
21 to get advanced permission. You can't just go wondering
22 around and then hope to fix it when you're done.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. So there will be some

1 paperwork. It will be \$20,000 unsecured with the home
2 detention. So you'll fill out some paperwork.

3 And, again, I'm giving you a break. If there are any
4 problems, bond is going to be revoked and you'll just have
5 to stay in jail until the case is resolved.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: I'm doing that because it's a big
9 handicap to be in custody and have to prepare for trial.
10 It's not impossible, but we do it as a last resort, and
11 I'm -- again, your convictions are old and there isn't any
12 evidence that you did not come to court when you were
13 supposed to. And it does appear that the gun was
14 your -- was your wife's.

15 So this is what I'll do. Obviously, all the other
16 dates that we set in place are -- stay on the calendar. So
17 trial is August 14th, 9:00. Final pretrial, August the 3rd
18 at 12:30 p.m., and a pretrial change of plea, July 24th the
19 1:00.

20 Although, I do note that we still haven't had any word
21 as to the third defendant, Mr. Perdue.

22 Do we know anything about him?

23 MR. DeBAGGIS: The government was notified
24 last week that he was arrested and detained in California,
25 and it's my understanding that he's going to be transported

1 back to this jurisdiction.

2 THE COURT: Okay. Fine. Thank you,
3 Mr. DeBaggis.

4 MR. DeBAGGIS: Okay.

5 THE COURT: Okay. Anything further to take up
6 from the government or the defendant?

7 MR. DeBAGGIS: No, Your Honor.

8 MS. KUCHARSKI: Your Honor, the only thing
9 that I would bring to the Court's attention is, one of the
10 conditions is that he avoid all contact with codefendants.
11 One of the codefendants is his brother --

12 THE COURT: All right. Well, obviously --
13 that's a good point, Miss Kucharski.

14 You can't have any contact with Mr. Perdue when he
15 gets back here, but, obviously, you know, you live with your
16 wife. So that condition doesn't apply to your wife,
17 Mr. Miller.

18 Okay. Thank you.

19 MS. KUCHARSKI: Thank you, Your Honor.

20 THE COURT: We're adjourned then.

21 DEPUTY CLERK: All rise.

22 - - -

23 (Proceedings adjourned at 1:43 p.m.)

24

25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

<u>/s/ Donnalee Cotone</u>	<u>20th of July, 2017</u>
DONNALEE COTONE, RMR, CRR, RSA	DATE